

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Public Works	(2) MEETING DATE 1/27/2015	(3) CONTACT/PHONE John Diodati, Department Administrator (805) 788-2832	
(4) SUBJECT Hearing to consider adoption of an ordinance repealing and replacing Chapter 6.48 of the County Code (Cable TV Franchises) to conform with State video franchising laws. All Districts.			
(5) RECOMMENDED ACTION It is recommended that the Board conduct a public hearing to adopt the attached ordinance repealing and replacing Chapter 6.48 of the County Code (Cable TV Franchises) to conform with State video franchising laws.			
(6) FUNDING SOURCE(S) N/A	(7) CURRENT YEAR FINANCIAL IMPACT N/A	(8) ANNUAL FINANCIAL IMPACT N/A	(9) BUDGETED? N/A
(10) AGENDA PLACEMENT { } Consent { } Presentation {X} Hearing (Time Est. 30 min.) { } Board Business (Time Est. ____)			
(11) EXECUTED DOCUMENTS { } Resolutions { } Contracts {X} Ordinances { } N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: N/A { } 4/5 Vote Required {X} N/A	
(14) LOCATION MAP Attached	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY { } N/A Date: 1/13/15, #1	
(17) ADMINISTRATIVE OFFICE REVIEW <i>Nikki J. Schmidt</i>			
(18) SUPERVISOR DISTRICT(S) All Districts			

Reference: 15JAN27-H-2

County of San Luis Obispo



TO: Board of Supervisors

FROM: Public Works

John Diodati, Department Administrator

VIA: Wade Horton, Director of Public Works

DATE: 1/27/2015

SUBJECT: Hearing to consider adoption of an ordinance repealing and replacing Chapter 6.48 of the County Code (Cable TV Franchises) to conform with State video franchising laws. All Districts.

RECOMMENDATION

It is recommended that the Board conduct a public hearing to adopt the attached ordinance repealing and replacing Chapter 6.48 of the County Code (Cable TV Franchises) to conform with State video franchising laws.

DISCUSSION

On January 13, 2015 your Board introduced an ordinance to repeal existing cable franchise County code and replace it with new language. The item today is the hearing to formally adopt the new language.

Historically, the right to operate, construct, maintain a cable system in the unincorporated areas of the County was through the issuance of a non-exclusive local franchise. Charter Cable operates a cable system under a local franchise set to expire on March 1, 2015. In 2006 the State Legislature passed the Digital Infrastructure and Video Competition Act of 2006 (DIVCA). DIVCA created a process where cable companies were able to apply for a template "State" franchise through the California Public Utilities Commission instead of local entities.

DIVCA allowed for a cable company to apply for a State franchise if one of the following three conditions were met:

1. When the local franchise expires, or
2. On a date that the cable company and local entity agree upon, or
3. When a competitor with a state franchise begins service in the local entities area.

With the local franchise expiring in March of 2015, Charter notified County staff that they would be pursuing a State franchise. In order to prepare for this change, repealing the existing "local franchise" ordinance language and replacing it with new DIVCA language is needed.

DIVCA provides for a local entity to preserve both their franchise fee and PEG funding (PEG = Public, Education & Government). The proposed ordinance keeps the five percent franchise fee and one percent PEG payment, which is consistent with the existing local franchise. However, Charter has asserted in other municipalities that the PEG payment is subject to approval through Proposition 26¹, which would require voter approval of this “fee.” (See discussion below.)

Another change to franchise administration will be with the PEG channel programming. As internet and self-broadcasting opportunities have increased, the Public channel has seen limited usage. In fact, programming on the Public channel has dropped from over 120 producers to now around 20. Prior to the January 13th introduction of this ordinance, staff contacted the producers who had contact information and only heard back from two. Staff and the Office of Education will attempt, when allowable, to accommodate these programs on the Education or Government channel. Simultaneously, the San Luis Obispo Office of Education has used their PEG funding to develop a robust educational program. Their demand for the channel has increased, and potential partnerships with Cuesta College and Cal Poly warrant a second channel. In order to accommodate these market shifts, the ordinance will transition the existing Public channel to a second Education channel. Future designation of the existing four PEG channels will be at the request of the Public Works Director or their designee.

OTHER AGENCY INVOLVEMENT/IMPACT

Staff worked with the County Office of Education and Charter on the PEG channel format and the ordinance has been reviewed by County Counsel.

FINANCIAL CONSIDERATIONS

Per existing law the transition to DIVCA should have no affect on franchise fee or PEG payments. However, if PEG payments are subject to Proposition 26, then one percent of gross sales may not be available to the County for PEG channel support. The County receives approximately \$750,000 annually for the Franchise Fee and \$150,000 annually for the PEG Fee.

The franchise fee is deposited in the County general fund while the PEG payment is held in trust and distributed for support of the Public, Education and Government channels. If Charter refuses to pay the PEG payment, the approximant \$150,000 per year could be at risk. The theory that Proposition 26 applies to PEG payments is pending an opinion of the State Attorney General.

RESULTS

Approval of the recommended action will allow the County to be prepared for the transition to a State franchise, which will facilitate a livable and well-governed community.

File: PEG CF 120.11.01

Reference: 15JAN27-H-2 V:\FRANCHIS\JD\DIVCA Ordinance_hearing bd ltr.doc JD:jb.mj

ATTACHMENTS

1. Ordinance
2. Strikethrough version of repealed Ordinance

¹ Proposition 26 passed in 2010, requires 2/3 voter approval for the approval or certain local taxes or fees.